

From: G. Del Merritt
To: Microsoft ATR
Date: 1/25/02 5:48pm
Subject: Microsoft Settlement

Dear Renata B. Hesse or To Whom It May Concern -

I offer the following comments on the "Stipulation and Revised Proposed Final Judgment (11/06/2001)":
<http://www.usdoj.gov/atr/cases/f9400/9495.htm>

Specifically:

- Under the "Prohibited Conduct" section, III.J, concerning the requirements of when Microsoft can/must disclose APIs or Documentation, too much latitude is given to Microsoft by both paragraphs 1 and 2. They can "spin" or re-implement almost any documentation or API such that it could be labeled as potentially able to compromise the overall security of the system. The explanation of this section in <http://www.usdoj.gov/atr/cases/f9500/9549.htm> is of some use here, but I do not feel comfortable with the wording of the Final Judgement itself.

- I fear that section IV.B, "Appointment of a Technical Committee", is destined to failure. Because of the breadth of Microsoft's presence in the software technology sector, just about any non-academic who has technical knowledge can be considered either a competitor of Microsoft or a likely employee/contractor of them. This makes item # 2 difficult to resolve.

- Also in section IV.B, I feel that items 9 and 10 are counterproductive to reigning in Microsoft's practices; without being able to report to the public further transgressions, there are no teeth to the committee. This, I presume, is exactly what Microsoft wants.

- Under section V.B, "Termination", I feel that should Microsoft be found to willfully engage in a pattern of further abuse, the clock should be reset: there should be no "one-time extension" of the remedies. Instead, each infraction can set up a brand new 5-year plan for monitoring Microsoft; there should be no limit to the number of extensions requested.

Throughout this case, and in general, Microsoft's practices have been clearly documented as irresponsible and anti-competitive. There are times when you have to make up for the harm you have done to others; this is one of those times for Microsoft.

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